

15 of the UCMJ, administrative actions, and civilian courts.

(d) Special rules exist for persons who have hemophilia, other blood-clotting disorders, or any medical or surgical disorder being treated with an anticoagulant. These persons—

(1) May refuse a blood extraction test without penalty.

(2) Will not be administered a blood extraction test to determine alcohol or other drug concentration or presence under this regulation.

(3) May be given breath or urine tests, or both.

(e) If a person suspected of intoxicated driving refuses to submit to a chemical test, a test will not be administered except as specified in § 634.38.

§ 634.38 Involuntary extraction of bodily fluids in traffic cases.

(a) *General.* The procedures outlined herein pertain only to the investigation of individuals stopped, apprehended, or cited on a military installation for any offense related to driving a motor vehicle and for whom probable cause exists to believe that such individual is intoxicated. Extractions of body fluids in furtherance of other kinds of investigations are governed by Rule 312(d), Military Rules of Evidence, and regulatory rules concerning requesting and granting authorizations for searches.

(1) Air Force policy on nonconsensual extraction of blood samples is addressed in AFR 160–12.

(2) Marine Corps personnel should not undertake the nonconsensual extraction of body fluids for reasons other than a valid medical purpose without first obtaining the advice and concurrence of the installation staff judge advocate or his or her designee.

(3) DLA policy on nonconsensual taking of blood samples is contained in DLAR 5700.7.

(b) *Rule.* Involuntary bodily fluid extraction is based on valid search and seizure authorization. An individual subject to the UCMJ who does not consent to chemical testing, as described above, may nonetheless be subjected to an involuntary extraction of bodily fluids, including blood and urine, only in accordance with the following procedures:

(1) An individual subject to the UCMJ who was driving a motor vehicle involved in an accident resulting in death, personal injury, or serious property damage may be subjected to a nonconsensual bodily fluid extraction to test for the presence of intoxicants only when there is a probable cause to believe that such an individual was driving or in control of a vehicle while under the influence of an intoxicant.

(i) A search authorization by an appropriate commander or military magistrate obtained pursuant to Rule 315, Military Rules of Evidence (Manual for Courts-Martial, chapter XXVII), is required prior to such nonconsensual extraction.

(ii) A search authorization is not required under such circumstances when there is a clear indication that evidence of intoxication will be found and there is reason to believe that the delay necessary to obtain a search authorization would result in the loss or destruction of the evidence sought.

(iii) Because warrantless searches are subject to close scrutiny by the courts, obtaining an authorization is highly preferable. Warrantless searches generally should be conducted only after coordination with the servicing staff judge advocate or legal officer, and attempts to obtain authorization from an appropriate official prove unsuccessful due to the unavailability of a commander or military magistrate.

(2) If authorization from the military magistrate or commander proves unsuccessful due to the unavailability of such officials, the commander of a medical facility is empowered by Rule 315(d), Military Rules of Evidence, to authorize such extraction from an individual located in the facility at the time the authorization is sought.

(i) Before authorizing the involuntary extraction, the commander of the medical facility should, if circumstances permit, coordinate with the servicing staff judge advocate or legal officer.

(ii) The medical facility commander authorizing the extraction under Rule 315(d) need not be on duty as the attending physician at the facility where the extraction is to be performed and

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the actual extraction may be accomplished by other qualified medical personnel.

(iii) The authorizing official may consider his or her own observations of the individual in determining probable cause.

(c) *Role of medical personnel.* Authorization for the nonconsensual extraction of blood samples for evidentiary purposes by qualified medical personnel is independent of, and not limited by, provisions defining medical care, such as the provision for nonconsensual medical care pursuant to AR 600-20, section IV.

(1) Extraction of blood will be accomplished by qualified medical personnel. (See Military Rules of Evidence 312(g).)

(i) In performing this duty, medical personnel are expected to use only that amount of force that is reasonable and necessary to administer the extraction.

(ii) Any force necessary to overcome an individual's resistance to the extraction normally will be provided by law enforcement personnel or by personnel acting under orders from the member's unit commander.

(iii) Life endangering force will not be used in an attempt to effect nonconsensual extractions.

(iv) All law enforcement and medical personnel will keep in mind the possibility that the individual may require medical attention for possible disease or injury.

(2) Nonconsensual extractions of blood will be done in a manner that will not interfere with or delay proper medical attention. Medical personnel will determine the priority to be given involuntary blood extractions when other medical treatment is required.

§ 634.39 Testing at the request of the apprehended person.

(a) A person subject to tests under § 634.8 may request that an additional test be done privately. The person may choose a doctor, qualified technician, chemist, registered nurse, or other qualified person to do the test. The person must pay the cost of the test. The test must be a chemical test approved by the State or host nation in an overseas command. All tests will be completed as soon as possible, with any delay being noted on the results.

(b) If the person requests this test, the apprehending police official may assist the suspect in making arrangements. If the police official fails to or cannot obtain the additional test, the results of the tests done at the direction of a law enforcement official are not invalid and may still be used to support actions under separate Service regulations, UCMJ, and the U.S. Magistrate Court.

§ 634.40 Preparation of sworn statement.

For an example of a property prepared sworn statement on an intoxicated driver, see Army Form 2823.

SECTION IV—OFF-INSTALLATION TRAFFIC ACTIVITIES

§ 634.41 General.

In areas not under military control, civil authorities enforce traffic laws. Law enforcement authorities will establish a system to exchange information with civil authorities. Off-installation traffic activities in overseas areas are governed by formal agreements with the host nation government. Procedures should be established to process reports received from civil authorities on serious traffic violations, accidents, and intoxicated driving incidents involving persons subject to this regulation.

§ 634.42 Compliance with State laws.

(a) Installation commanders will inform service members and DOD civilian employees to comply with State and local traffic laws when operating military motor vehicles.

(b) Commanders will coordinate with the proper civil law enforcement agency before moving Government vehicles that exceed legal limits or regulations or that may subject highway users to unusual hazards. (See AR-162/OPNAVINST 4600.11D/AFR 75-24/MCO 4643.5C/DLAR 4580.8.)

(c) Installation commanders will maintain liaison with civil enforcement agencies and encourage the following:

(1) Release of a Government vehicle operator to military authorities unless one of the conditions below exists.

(i) The offense warrants detention.